

February 24, 2005

Federal Communications Commission

OFFICE OF THE SECRETARY

445-12th Street SW

Washington DC, 20554

Re: IN THE MATTER OF THE REQUEST FOR REVIEW
BY RELCOMM INC.

OF THE DECISION OF THE UNIVERSAL SERVICE
FUND ADMINISTRATOR.

CC Docket No.02-6

SLD Decision 1022916 and 1023492

Year Six E-Rate

Billed Entity #123420 Atlantic City Board of Education.

Dear Sir or Madam:

During RelComm's litigation against the Atlantic City School District ("ACBOE"), its Superintendent, Fred Nickles, and its E-rate Consultant, Martin Friedman, owner of Alemar Consulting, numerous documents have been exchanged and depositions taken that provide further evidence of our claims of bid rigging, fraud and violation of e-rate rules and regulations in connection with ACBOE's Year 6 E-rate award.

We are enclosing portions of the deposition transcripts that highlight these actions. The entire transcripts of the depositions of Martin Friedman (E-Rate Consultant), Marilyn Cohen (Technical Supervisor ACBOE), Jon Jones (Former Data Center Manager ACBOE), Leslie Motz, (Former Acting Business Administrator ACBOE), Lisa Mooney Business Administrator ACBOE), and Fred Nickles (Superintendent ACBOE) are available upon request.

Areas specific to our complaints are highlighted, though throughout the depositions there are numerous examples of erroneous statements and contradictions from Mr. Friedman

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and Supt. Nickles regarding the E-Rate program and the Atlantic City Board of Education.

Mr. Friedman testified that his employee, John Holt, developed the bid specifications for ACBOE and other entities for which Alemar filed applications as an E-Rate consultant. John Holt, as a principal of Informed Resources Inc., also received numerous E-rate awards from those other entities for which Martin Friedman and Alemar Consulting filed applications during this same time period.

Marilyn Cohen, Technical Supervisor, testified that she had no involvement with ACBOE's year 6 E-rate program and that no technical people from the District participated either in creating the specifications or in the evaluation of the bids.

Leslie Motz, Business Administrator, testified that Martin Friedman developed the bid specifications, evaluated the bids and then recommended the winning bidder for ACBOE's year 6 E-rate application. She also stated that Friedman and John Holt were responsible for evaluating the bids and recommending what the district's needs were.

Lisa Mooney, Business Administrator, testified that the same Purchase Order authorizing Mr. Friedman to represent the ACBOE to the Federal Government was later found to be in violation of NJ State Bid laws, and the District was fined.

Martin Friedman stated that he believes that the funding level for internal connections never went below 90% after the first year of the program yet the funding level for Internal Connections has gone below 90% every year. Mr. Friedman's E-rate expertise and ability of getting schools into the 90% bracket were reasons given by Supt. Nickles for hiring Alemar Consulting. Nickles hired Mr. Friedman, had him working for the district, and authorized Alemars Purchase Order months prior to receiving Board approval.

Mr. Friedman admitted that he used the same specifications for different entities often because those schools had no technical expert on staff. He also stated that Technology Plans were fluid allowing for variations in what would be requested by a school. His "clients" tend to order the same equipment or services from the same vendors through generic 470 applications. New technology and products often appear on all of his clients' 471 applications and is always purchased from the same provider.

One of Alemar's vendors, MTG, the bid winner in Atlantic City and a bid winner at all of Alemar's other clients, produced documents during discovery and made statements to the FCC (**see filings listed below**) in their Request for Waiver. MTG acknowledged that they had received documents prior to bidding that were not given to nor brought to the attention of the other vendors. They seek to justify this fact as somehow not really giving them much of an edge, despite the fact that preferential information violates State Bidding Laws and raises the question as to what other information and treatment MTG received.

Mr. Friedman testified that he has no knowledge as to how MTG received those specific documents from the School District prior to the bid, despite Alemar being in charge of the bid specifications and all contact with potential bidders. Martin Friedman was also unable to explain E-mails between himself and the owner of MTG which discuss equipment that no other vendor was aware was included in the bid AFTER the bids were due and PRIOR to them being opened.

Also of importance are the statements made by MTG during the exchange of information with the FCC. MTG even acknowledges that they have received e-rate awards from Friedman every time that Friedman has managed an e- rate bid (over 31 times).

At his Deposition, Martin Freidman refused to answer any questions regarding MTG's and Alemar's association on those other bids.

MTG also received an award to provide wiring to the ACBOE, though without the proper NJ State certifications, and their subcontractor is COMTEC, the company that Martin Friedman admits "introduced him to the District". COMTEC already had a "consulting" contract to make recommendations to the district prior to the year 6 awards. Comtec also has now received numerous awards from Freidman clients.

A Complete copy of MTG's statements and additional evidence can be viewed at www.fcc.gov/cgb/ecfs/. Click on Search for Filed Comments, then enter proceeding number 02-6

The first page(1-100) has comments:

Filed by **Relcomm and the ACBOE dated 1/06/05, 1/11/05**, which are responses from, and to the ACBOE's request to waive various FCC rules.

Filed by Micro Technology Group dated 11/30/04, which requests a waiver of FCC regulations while acknowledging evidence against them.

Filed by ACBOE dated 11/16/04 and Relcomm dated 11/15/05, which discuss the evidence.

Page 2 (101-200)

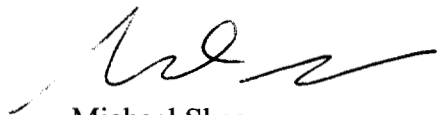
Filed by Micro Technology Group Dated 11/08/04 Provides comments by MTG that acknowledge receiving inside information yet attempts to justify those facts.

Filed by Relcomm dated 10/25/04, and ACBOE dated 10/18/04 Provide additional evidence.

Page 3 (201-300)

Filed by Relcomm, Dated 8/09/04 and 8/06/04 are the original filing by RelComm's and includes evidence accumulated to those dates.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Shea', with a long horizontal flourish extending to the right.

Michael Shea
RelComm, Inc.

1 SUPERIOR COURT OF NEW JERSEY
2 LAW DIVISION-ATLANTIC COUNTY
3 DOCKET NO. ATL-L-477-04

4 RELCOMM, INC.,
5 Plaintiff,

6 vs.

7 ATLANTIC CITY BOARD OF EDUCATION;
8 FREDRICK P. NICKELS; MICRO
9 TECHNOLOGY GROUPE, INC.; DONNA
10 HAYE; MARTIN FRIEDMAN; ALEMAR
11 CONSULTING; and JOHN DOES 1-20,
12 Defendants.

COPY

13 -----
14 Wednesday, September 22, 2004
15 -----

16 Oral sworn deposition of LESLEY MOTZ, taken
17 at the law offices of Mairone, Biel, Zlotnick &
18 Feinberg, P.A., 3201 Atlantic Avenue, Atlantic City,
19 New Jersey, before Kathleen Tate, Certified
20 Shorthand Reporter and Notary Public of the State
21 of New Jersey, on the above date, commencing at
22 11:21 a.m., there being present:

23 FLASTER GREENBERG
24 1810 Chapel Avenue West
25 Cherry Hill, New Jersey 08002
BY: J. PHILIP KIRCHNER, ESQ.
Attorneys for Plaintiff

ROVILLARD & BLEE, L.L.C.
8025 Black Horse Pike
Bayport One, Suite 455
West Atlantic City, New Jersey 08232
BY: MICHAEL J. BLEE, ESQ.
Attorneys for Defendant
Atlantic City Board of Education

TATE & TATE
The Lexington Building, Suite 5
180 Tuckerton Road
Medford, New Jersey 08055
(856) 983-8484 - (215) 735-9088

1 Q. And to whom did you report as the acting
2 business administrator?
3 A. Superintendent.
4 Q. Mr. Nickles, is that right?
5 A. Yes, sir.
6 Q. Now, at the time you were hired, was the
7 school district looking for a permanent business
8 administrator?
9 A. I did not hear anything to go forward with
10 the permanence, to stay within interim or anything
11 else, I was simply appointed as the interim and
12 there was no further discussion.
13 Q. Okay.
14 A. At least not within my hearing.
15 Q. And why did you leave the school district?
16 A. The Board of Education returned the former
17 business administrator to the position.
18 Q. And what happened to your position?
19 A. The position interim is temporary and it
20 would simply no longer exist.
21 Q. Did you have a contract?
22 A. I believe so, yes.
23 Q. Was there a term of the contract? Do you
24 know how long it lasted?
25 A. I would assume that it would have been

1 A. No, sir.
2 Q. Who was responsible for that activity?
3 A. That would have been Jonathan Jones.
4 Q. And who was Jonathan Jones?
5 A. He was a technology -- I can't think of the
6 exact title. He was either a manager or a director
7 or a web master, there were numerous titles floating
8 and I don't remember his specific one.
9 Q. If I told you he was director of the data
10 center, does that sound right to you?
11 A. It sounds reasonable.
12 Q. So, he was responsible for determining what
13 the School Board would be seeking in the way of
14 E-Rate funding, is that correct?
15 A. That was my assumption when I went in, yes,
16 sir.
17 Q. Well, did anybody tell you that or did you
18 just assume that?
19 A. I assumed that.
20 Q. On the basis of what facts did you assume
21 that?
22 A. That when I was introduced to him I was
23 told that he was in charge of the data services and
24 getting the E-Rate funding and keeping the district
25 running technologically.

1 until a permanent position appointment was made.
2 Q. You are assuming that, you are not sure
3 about that?
4 A. I am assuming that, I am not sure of it,
5 no.
6 Q. Was there a written contract, do you
7 recall?
8 A. The contract would have been implicit in
9 the board record in the minutes.
10 Q. Were you tenured at the Atlantic City
11 School Board?
12 A. No, sir, interim doesn't carry tenure.
13 Q. What do you know about the E-Rate Program?
14 A. Not very much.
15 Q. Did you have any involvement while you were
16 in Atlantic City with the E-Rate Program at the
17 Atlantic City School Board?
18 A. Not particularly, no.
19 Q. Okay. Did you have any involvement in
20 determining what Atlantic City School Board was
21 going to be seeking in the way of E-Rate funding?
22 When I say what, I mean in the way of equipment,
23 hardware, services?
24 A. No, sir.
25 Q. You had no involvement in that?

1 Q. When you say you were told, do you mean by
2 Mr. Jones himself or by someone else?
3 A. I was probably told by someone else, but I
4 don't know who that might have been.
5 Q. Did anyone ever tell you during your time
6 at the Atlantic City School Board that Mr. Jones was
7 not responsible for the school district's E-Rate
8 applications?
9 A. No.
10 Q. Did you have any involvement during your
11 time in Atlantic City with soliciting bids for
12 E-Rate services?
13 A. No, I did not.
14 Q. Who was responsible for that activity?
15 A. That was -- there was -- well, the Board of
16 Education employed a consultant to receive bids for,
17 I believe, it was year six of E-Rate funding.
18 Q. Okay. Year six would be 2003/2004, is that
19 right?
20 A. I would like to agree with you, but I'm not
21 sure.
22 Q. You are not sure, okay. Do you recall when
23 the consultant was hired by the school district?
24 A. I believe it was October, possibly earlier
25 of 2003. No, sorry, 2002.

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1 Q. Okay. You had left the school district by
2 October of 2003, is that right?
3 A. That's correct.
4 Q. Do you recall that this consultant was
5 hired while you were still employed there?
6 A. While I was there, yes.
7 Q. So, your recollection is it was October of
8 2002? Is that a yes?
9 A. I'm thinking.
10 Q. Okay. Sorry. I just wanted to make sure
11 the reporter got your answer.
12 A. It was between July and October of 2002;
13 that much I am pretty sure of.
14 Q. And is this Alemar you are talking about,
15 is that the consultant?
16 A. That's correct, but I remember Mr. Friedman
17 and I remember John Holt and if that was the
18 company's name, that would be correct.
19 Q. Who is Mr. Friedman?
20 A. Martin Friedman was the consultant employed
21 to direct those activities of receiving bids for
22 year six E-Rate funding.
23 Q. And who is Mr. Holt?
24 A. Mr. Holt is one of his employees, I
25 believe.

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1 Q. Did you ever meet Mr. Holt?
2 A. Yes, I did.
3 Q. And did he describe himself to you as one
4 of Mr. Friedman's employees?
5 A. Yes, he did.
6 Q. What about year five, who was responsible
7 for soliciting bids for year five's E-Rate
8 application?
9 A. I would like to say that it was Mr. Jones.
10 Q. Are you sure of that answer?
11 A. Reasonably so, yes.
12 Q. And do you know who was responsible for
13 soliciting bids for year four's E-Rate application?
14 A. I would assume it was also Mr. Jones.
15 Q. Do you know that for a fact or are you
16 assuming that?
17 A. I am assuming it since I wasn't there.
18 Q. Do you know who was responsible for
19 evaluating and selecting the bid winners for year
20 four?
21 A. Again, I am assuming Mr. Jones would have
22 prepared an analysis and submitted it to the
23 superintendent. Thereafter, it would have gone to
24 the Board of Education for consideration and
25 approval.

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1 Q. Okay. And what about year five?
2 A. Same thing.
3 Q. Same process?
4 A. Yes, sir, should be.
5 Q. Okay. And were you still employed by the
6 school district when year six contracts were
7 awarded?
8 A. Yes, sir, I was.
9 Q. Okay. Who evaluated those bids and made
10 recommendations to the board?
11 A. Those recommendations were made by Mr.
12 Friedman to the board.
13 Q. Okay. Is it your understanding that Mr.
14 Friedman was responsible for evaluating the bids
15 that were received?
16 A. That's correct.
17 Q. Did you have any involvement in year four
18 in putting together bid specifications for the
19 E-Rate application?
20 A. I am trying to think back to what year four
21 would be and I don't believe I was there then.
22 Q. It would have been 2001/2002. So, those -
23 A. I honestly do not remember.
24 Q. So, those bid specifications probably would
25 have been created in late 2000 before you arrived?

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1 A. Yeah.
2 Q. Okay. How about for year five?
3 A. I honestly do not remember seeing anything.
4 Q. Were you personally involved in that
5 activity?
6 A. No, I was not.
7 Q. How about for year six, did you have any
8 involvement in creating bid specifications for year
9 six's application?
10 A. No, sir. I was on the telephone with Mr.
11 Holt who had some questions concerning the district
12 and that was over the Christmas recess of 2002. He
13 had some questions about where things were placed
14 and I don't remember the other things, but I do
15 remember spending some time on the telephone with
16 him.
17 Q. Was it your understanding that Mr. Holt was
18 involved in creating the bid specifications for year
19 six's application?
20 A. Yes, sir.
21 Q. How about Mr. Friedman?
22 A. I would imagine he was as well.
23 Q. Okay. Did Mr. Holt tell you that Mr.
24 Friedman was involved or are you assuming that?
25 A. I am assuming since he was the consultant

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1 named to do the specifications that it would have
2 been -- Mr. Holt's activities would have been at Mr.
3 Friedman's direction.
4 Q. Why did Mr. Holt call you about questions
5 about the school district?
6 A. Because I was there.
7 Q. Well, had you been designated by the school
8 district as the point person for that activity?
9 A. I hadn't been designated by anyone. I
10 happened to be on premises and Mr. Holt called the
11 office and I happened to be there and picked up the
12 telephone and he asked me some questions and I tried
13 to answer them.
14 Q. Do you know, did he call you directly or
15 did he call just looking for someone to answer
16 questions?
17 A. He called me directly.
18 Q. He called you directly?
19 A. Uh-huh.
20 Q. And were you able to answer his questions?
21 A. I believe I was.
22 Q. Do you recall what questions he asked you?
23 A. No, sir, I do not.
24 Q. Do you recall whether they were technical
25 questions?

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1 A. They would not have been technical
2 questions. They would have been questions involved
3 with numbers of students on roll, numbers of
4 buildings, that sort of thing and if there had
5 been -- no, I believe that would have been the
6 extent of it.
7 Q. Okay. Did he ask you questions about
8 students enrolled in the school lunch program?
9 A. He may have. I don't particularly recall
10 that, but he may have done that.
11 Q. Okay. What do you know about the
12 regulations regarding E-Rate applications?
13 A. Not very much.
14 Q. Do you know anything about the budgeting
15 requirements associated with an E-Rate application?
16 A. No, sir, I do not.
17 Q. Are you familiar with regulations that
18 require the school district to budget for its
19 portion of the E-Rate award?
20 A. No, sir, I am not.
21 Q. Do you know how E-Rate awards work?
22 A. No, I do not.
23 Q. Do you know that the Federal Government
24 contributes a percentage of the expense and the
25 school district is required to fund the rest?

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1 A. I am not aware of these regulations.
2 Q. Well, I am not asking about the regulation.
3 Are you generally aware of the requirement that the
4 school district is obligated to pay a portion of the
5 E-Rate expense?
6 A. I am not particularly aware of it.
7 Q. Okay. When was the 2002/2003 budget for
8 the school district created?
9 A. Well, that period would have been from
10 September '02 through the election of '03, and if
11 there had been a defeated budget it would have gone
12 on as long as it needed to go on for all parties to
13 agree to a tax rate strike.
14 Q. Okay. I am talking now about the '02/'03
15 budget.
16 A. I am sorry.
17 Q. Okay. So --
18 A. Let's go back a year.
19 Q. I think you were a year ahead.
20 A. Yes, I was.
21 Q. So, would it be fair to say that that would
22 have started in September of '01?
23 A. If you are looking for an '02/'03 budget
24 then you are going to go back to '01/'02 to do the
25 formulation and all of the things that go to get you

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1 to a place where you have documents approved by the
2 county office and you to go a public vote.
3 Q. Now, you were at the school district during
4 that time, is that right? You started in April of
5 '01?
6 A. That's correct.
7 Q. Who would have been responsible for making
8 sure that the school district had properly budgeted
9 for its portion of the E-Rate expenses?
10 A. If it were to be included in the '02/'03
11 budget?
12 Q. Right.
13 A. Then that would have been from the
14 technology department submitting a budget to the
15 superintendent and having it placed in the budget.
16 Q. And at that time would that have been Joe
17 Jones?
18 A. Yes, sir.
19 Q. And who would he have submitted his budget
20 request to?
21 A. The superintendent.
22 Q. Not to you?
23 A. Not necessarily, no.
24 Q. Well, when you say not necessarily, what do
25 you mean by that? Do you recall to whom he

7 (Pages 22 to 25)

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1 submitted his budget request for E-Rate funding?
2 A. He submitted it to the superintendent.
3 Q. Mr. Nickles?
4 A. Yes, sir.
5 Q. Did Mr. Nickles consult with you about
6 that?
7 A. About the budget or about the E-Rate
8 funding?
9 Q. About the E-Rate funding, about the school
10 district's budget for E-Rate funding.
11 A. He did not consult with me, no.
12 Q. Do you know what the school district
13 budgeted if anything in its '02/'03 budget for
14 E-Rate funding?
15 A. I do not remember that, sir.
16 Q. Do you know if the school district
17 budgeted -
18 A. I do not know that either.
19 Q. Okay. Who would know that?
20 A. The record.
21 Q. When you say the record, what do you mean?
22 A. All of the paperwork for that year should
23 be in the Board of Education offices.
24 Q. Okay. What would I look at specifically in
25 the way of the record to determine whether the

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1 A. He is a gentleman who was serving as the
2 business manager for the district when I arrived in
3 the district.
4 Q. Did he report to you?
5 A. Theoretically he should have. As a
6 practical matter I believe he reported straight to
7 the superintendent.
8 Q. Was that for the entire time that you were
9 there?
10 A. Yes, it was.
11 Q. Okay. What, if anything, did Mr. Thompkins
12 have to do with creating the '02/'03 budget?
13 A. A great deal.
14 Q. What were his responsibilities?
15 A. His practical knowledge of the systems of
16 accounts, the time that he had been in the district
17 prior to my walking in made him a resource to
18 finding out what should be included, what can be set
19 aside and what should be put forward to move ahead
20 in the district.
21 Q. Did he report to you in that activity?
22 A. No, he did not.
23 Q. To whom did he report?
24 A. The superintendent.
25 Q. Okay. Are you familiar with E-Rate

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1 school district had budgeted in its '02/'03 budget
2 for E-Rate funding?
3 A. The '02/'03 budget.
4 Q. Is there a line item that says E-Rate
5 funding or something similar to that?
6 A. There would be - I do not remember what
7 the line item designation is, but there should be a
8 block of numbers that are strictly for technology of
9 the district. Now, recently they've changed their
10 gap chart of accounts that sets I.T. separately.
11 So, it's very specifically identified. It may have
12 been included in some other numbers in other
13 departments.
14 Q. Do you recall in the '02/'03 budget where
15 I.T. would have been located?
16 A. No, I do not.
17 Q. Do you recall though that there was not a
18 separate line item for I.T. in the '02/'03 budget?
19 A. I think I can recall that there would not
20 have been a separate budget for that.
21 Q. Okay. When an application is filed for the
22 '02/'03 budget I.T. was included in some other
23 department, is that correct?
24 A. I believe so, yes.
25 Q. Did Mr. Nickles know that?

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1 regulations that require the school district in its
2 application for funding to certify to the Federal
3 Government that it has budgeted for its portion of
4 the E-Rate expenses?
5 A. I am not familiar with the regulations. I
6 cannot recall them.
7 Q. Well, did you ever hear anybody talking
8 about that?
9 A. Not that I can recall.
10 Q. Who at the school district would have been
11 responsible in '01/'02 for certifying to the Federal
12 Government that the school district had properly
13 budgeted for its portion of the E-Rate application?
14 A. I honestly don't know when '01/'02 was
15 filed. I don't remember what year that would have
16 been, so I don't know when it would have been put
17 together and I don't know who would have signed.
18 Q. Okay. Now about '02/'03, do you remember
19 for that year?
20 A. I don't remember signing anything. I may
21 have, but I don't remember signing anything, and I
22 know I didn't put it together.
23 Q. Well, assuming if you mean the E-Rate
24 budget?
25 A. If there was an application, I would have

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1 Atlantic City's hardware, software, peripherals were
2 not adequate to that task.
3 Q. And who did you learn that from?
4 A. I believe I learned that from the
5 superintendent.
6 Q. Mr. Nickles?
7 A. Yes.
8 Q. Are you familiar with a company called
9 Omicron?
10 A. Omicron?
11 Q. Yes. I've heard it pronounced several
12 different ways. Omicron?
13 A. I think that's the way you pronounce it.
14 Q. Okay.
15 A. Yes, they were one of the technology
16 consultant firms asked to provide an evaluation of
17 what was on premises and they came in and they did
18 that.
19 Q. Do you recall whose decision it was to
20 bring Omicron in as a consultant?
21 A. I believe it was the superintendent who
22 made a presentation to the board.
23 Q. Do you have any knowledge as to who
24 brought Omicron in?
25 A. No, I do not.

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1 Q. Do you know what Omicron was paid for its
2 services?
3 A. No, I don't remember that.
4 Q. Do you know who Nathan Berk is?
5 A. No, sir, I do not.
6 Q. The name doesn't ring any bells with you?
7 A. Not at the moment, no.
8 Q. Did you know anything about the school
9 district's year six E-Rate application, the contents
10 of it?
11 A. No, sir, I don't.
12 Q. So do you have any knowledge that the
13 proposed, that the application for year six sought
14 new equipment for the school district?
15 A. No, sir, I have no knowledge of that.
16 Q. How about new wiring?
17 A. No, I do not remember.
18 Q. Are you familiar with a company called
19 ComTec?
20 A. Yes, sir.
21 Q. Do you know who ComTec is?
22 A. They were a second technology firm --
23 Q. Do you know what their -- I am sorry. Are
24 you finished?
25 A. They too were asked to provide an

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1 evaluation of the district's technology resources.
2 Q. Do you recall when that occurred?
3 A. I think it was probably in the fall of '92
4 or possibly earlier.
5 Q. Do you recall when Omicron's evaluation
6 was?
7 A. About the same time.
8 Q. Did you participate in a meeting at which
9 time the year six E-Rate bids were opened and
10 evaluated?
11 A. I was probably at the meeting. I do not
12 particularly recall it.
13 Q. Why do you believe you were at the meeting?
14 A. Because there would have had to have been a
15 date set. There would have had to be bids received
16 and they would then be turned over for evaluation to
17 the people who would evaluate them and I would
18 probably have been there already for the opening.
19 Q. And is that because you were the qualified
20 purchasing agent for the district at that time?
21 A. That and because I was there to make sure
22 that they were a certified in the keeping of the
23 record for the receipt of bids, that's all.
24 Q. I believe you testified earlier that it was
25 Mr. Friedman's responsibility to evaluate those

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1 bids?
2 A. Yes.
3 Q. Did Mr. Friedman or anyone else from his
4 company provide you with any type of written
5 assessment or evaluation of the bids received?
6 A. I believe that the assessment was presented
7 to the Board of Education and those documents would
8 have been kept. I remember seeing my office to the
9 board for consideration.
10 Q. Okay. But do you recall receiving in your
11 office some written evaluation of the year six bids?
12 A. I believe so.
13 Q. And then your testimony is that you would
14 have forwarded that to the Board of Ed. Is that
15 right?
16 A. Yes, that's correct.
17 Q. Is that your recollection?
18 A. That is my recollection; in a very vague
19 way, yes, that's my recollection.
20 Q. Would you normally keep a copy of that
21 evaluation?
22 A. That would be on file in the board office.
23 Q. Where would that be filed in the board
24 office?
25 A. In the business administrator's office.

13 (Pages 46 to 49)

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1 Q. When you were the business administrator,
2 did you keep files by specific contract?
3 A. Yes.
4 Q. Rather than say chronologically?
5 A. Yes.
6 Q. So, there would have been a file for the
7 year six E-Rate application and all the bids would
8 be in there?
9 A. Yes.
10 Q. And the evaluation of those bids would be
11 there?
12 A. It should be, yes.
13 Q. Should be?
14 A. Yes.
15 Q. Do you have any recollection, assuming you
16 were at the -- how do I ask this? You believe you
17 were at a meeting at which time the bids were open
18 for year six, is that right?
19 A. I think I was.
20 Q. Do you have any recollection as to who else
21 was there?
22 A. I think the meeting was held on the third
23 floor in the superintendent's conference room and I
24 believe the superintendent was there. I believe Mr.
25 Friedman was there and I don't know who else would

1 you open the bid and you read the bidder and the
2 particulars of the bid, is that recorded either on
3 tape or --
4 A. It's generally recorded in a subsequent
5 board meeting when the board acknowledges receipt of
6 bids for X from the following vendors in X sums and
7 then the board awards or does not.
8 Q. Do you create any kind of written log to
9 track which bids have been received?
10 A. I have done that. I don't know if it was
11 done for that or not.
12 Q. That was going to be my next question. Do
13 you recall doing that during your year six E-Rate
14 bids?
15 A. I do not recall that.
16 Q. You recall a meeting at which time those
17 bids received for the six year E-Rate applications
18 were opened and then was the evaluation; did the
19 evaluation occur after that?
20 A. The evaluation had to occur after that.
21 Q. So, after the bids were opened they were
22 turned over to Mr. Friedman for evaluation, is that
23 right?
24 A. To the best of my recollection, yes, sir.
25 Q. Do you recall how soon after the meeting at

Page 51

Page 53

1 have been there. I have a picture in my mind of
2 being in that office to receive those things. Now,
3 whether it was that particular year six E-Rate or
4 not, I am not sure.
5 Q. How do you actually record the bids that
6 are received? Is those responsibility is it to do
7 that?
8 A. Generally it's the business administrator's
9 to open them, read out the name of the vendor, the
10 town, what the bid is for -- sorry, let me go back a
11 moment. The -- the bids are received, and then
12 the day and the bids are now closed, and these
13 are read out. We read out the name of the vendor,
14 read out the name and the town and the state. We
15 read out the amount of the bid, and then we read out
16 particulars in aggregate or in a specific set of
17 items. And then we advise all persons present that the bids will
18 be made.
19 A. Other than receiving the items, sometimes
20 they are read out to the board. I don't recall
21 them; not particulariv, no.

1 which time they were opened that you received back
2 the evaluation from Mr. Friedman?
3 A. I do not recall, but it could not have been
4 a significant period of time.
5 Q. Why is that?
6 A. Because if I know anything about funding at
7 the federal level, you have to be timely. So, there
8 would be a brief period, a window of opportunity
9 and, then after, there would have to be funding on
10 the record and the procedure would proceed.
11 Q. Was there a deadline for filing the application?
12 A. I would have to say, yes.
13 Q. Do you recall who, which companies were
14 involved in the year six E-Rate funding?
15 A. No, sir, I do not recall.
16 Q. Did you recall any of those companies?
17 A. No, sir, I do not.
18 Q. Did you recall who should receive year six
19 funding?
20 A. I would assume that Mr. Friedman made a
21 decision as to who should receive year six
22 funding or modified.

NO. 902612

BOARD OF EDUCATION

006624

ENTERED BY

ATLANTIC CITY, N.J. 08401

P.O. NUMBER

02-00100

This number must

be paid by

As a Official Substitution of the State of New Jersey and the

VENDOR:

SHIP TO:

ALEMAR CONSULTING

ADMINISTRATIVE SERVICES

BROOMALL, PA

1800 PACIFIC AVENUE

19008-0023

SEE THE BACK OF THIS FORM FOR TERMS AND CONDITIONS.

ORDER DESCRIPTION

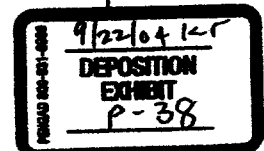
FOB

REQUISITION # 2230

YEAR 6 E-RATE

PAGE 1

QUANTITY	DATE	STATE CONTRACT #	PRICE	ATLANTIC CITY
		CONTRACT FOR YEAR 6 E-RATE SERVICES		25,000.00
			TOTAL *****	25,000.00
1100023089000090890		25000.00		



NOT ORDERED THROUGH PURCHASING

006624

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ATLANTIC COUNTY
DOCKET NO. ATL-L-477-04

----- : DEPOSITION OF:
RELCOMM, INC., : MARILYN M. COHEN
Plaintiff, :
vs. :
ATLANTIC CITY BOARD :
OF EDUCATION; :
FREDRICK P. :
WICKELS; MICRO :
TECHNOLOGY GROUPE, :
INC., DONNA HAYE; :
MARTIN FRIEDMAN; :
ALEMAR CONSULTING; :
and JOHN DOES, :
1-20, :
Defendants. :

WEDNESDAY, AUGUST 18, 2004

Transcript of testimony as taken at the
law offices of Flaster/Greenberg, P.C., 2900 Fire
Road, Suite 102A, Egg Harbor Township, New Jersey,
before Karen Friedlander, Certified Shorthand
Reporter and Notary Public of the State of New
Jersey, on the above date, commencing at 10:10 a.m.

KAREN FRIEDLANDER, CSR, RMR
23 Sycamore Drive
Blenheim, NJ 08012
(856) 228-5979

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ALSO PRESENT:
Michael Shea
Martin Friedman

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1 walk-throughs, regarding whether the high school was
2 included in the bid or not?

3 A. I don't recall.

Q. Do you recall telling prospective
vendors at any of the year six walk-throughs that
the high school was not included in the bid?

7 A. I don't recall.

8 Q. Do you recall, sitting here today,
9 whether the year six bid included the high school?

10 A. I believe it did.

11 Q. Why do you believe it did?

12 A. Because there was work that needed to be
13 done at the high school. We just very often didn't
14 qualify, so we had to put it separately.

15 Q. What do you mean by you didn't -- when
16 you say we didn't qualify, you mean the school
17 board?

18 A. The district, yes, the school board.

19 Q. And why didn't the district qualify?

20 A. E-rate is predicated on free and reduced
21 lunches, so there are certain factors that would put
22 you at a lower level that may not be funded.

23 Q. Are you referring to the fact that the
24 high school has a lower percentage of students on
free or reduced lunch than the other school

30

1 buildings?

2 A. Yes.

3 Q. So including the high school in the mix
4 lowered the district's chances of qualifying for
5 E-rate funding, is that your understanding?

6 A. If you put them together.

7 Q. Was there a point in time where the
8 school district decided to separate the high school
9 out from the other buildings?

10 A. In year six.

11 Q. So your recollection is that in year six
12 the high school was treated separately?

13 A. Yes.

14 MR. BLEE: Objection to the form of the
15 question.

16 BY MR. KIRCHNER:

17 Q. Do you recall how it was treated
18 separately?

19 A. No, I do not.

20 Q. Do you recall whether any of the year
six walk-throughs were videotaped?

22 A. I do believe there was video taping
23 going on without -- without it being announced. A
24 lot of vendors had still cameras, but nobody
25 announced if they were taping or not taping.

1 Q. Was there any restriction announced
2 against photography or taping of the walk-through?

3 A. Not in year six.

4 Q. Is it possible that your recollection
5 would be refreshed if you saw a videotape of any of
6 the year six walk-throughs about what happened
7 during those walk-throughs?

8 A. It may be.

9 Q. Such as, for example, whether you
10 instructed vendors that the high school was not
11 included in the year six bid?

12 A. Maybe. As I stated before, those days
13 are a blur.

14 Q. How long did the January 24, 2003
15 walk-through last?

16 A. I believe it was a few hours in the
17 morning.

18 Q. And do you recall being asked questions
19 during that walk-through?

20 A. Yes, I do.

21 Q. And do you recall how you answered those
22 questions?

23 A. In most instances I would refer to
24 either Alemar, Mr. Friedman directly, or to
25 Mr. Jones.

32

1 Q. Was any other representative of the
2 school district present during the walk-through on
3 January 24, 2003?

4 A. No.

5 Q. And did Mr. Friedman participate in that
6 walk-through?

7 A. There was a representative of Alemar,
8 but I'm not sure which date Mr. Friedman went on th
9 walk-through.

10 Q. Do you remember who the representative
11 of Alemar was at the January 24, 2003 walk-through?

12 A. I believe John Holt and Bob Harmon were
13 both there.

14 Q. Bob Harmon? Who's Bob Harmon?

15 A. He's a representative of Alemar.

16 Q. When you say representative, what do you
17 mean?

18 A. I was -- they were sent by Alemar. I
19 don't ask what their position with the company is.

20 Q. How about John Holt, you said?

21 A. He was also asked to come by Alemar.

22 Q. Had you met Mr. Holt prior to that
23 walk-through?

24 A. There had been conversation with Lesley
25 Motz, between Lesley Motz and John Holt, and that's

1 how I was informed that he would be coming on the
2 walk-through.

3 Q. Who is Lesley Motz?

4 A. She was the interim business
5 administrator.

6 Q. She was the business administrator at
7 the time of the walk-through?

8 A. Interim.

9 Q. Interim. Interim?

10 A. Yes, sir.

11 Q. At the time of the walk-through, did she
12 tell you that she had conversations with John Holt
13 or did you participate in those conversations?

14 A. No, she would tell me that he was
15 just -- to expect a phone call, that he was going to
16 be doing -- you know, going on the walk-through.

17 Q. What was Lesley Motz's involvement in
18 the year six walk-throughs?

19 A. None, other than to allow Mr. Holt to
20 have my phone number.

21 Q. Why was it that Mr. Holt was getting in
22 touch with Ms. Motz and you directly?

23 A. You would have to ask him.

24 Q. So you don't have any answer for that
25 yourself?

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1 A. I don't speculate.

2 Q. Did you ever talk to Mr. Holt about
3 that?

4 A. No.

5 Q. Did you ever talk to Mr. Friedman about
6 that?

7 A. No.

8 Q. So Lesley Motz told you that John Holt
9 would be showing up to participate in the
10 walk-through, is that right?

11 A. Lesley Motz told me Mr. Holt would be
12 calling me about the walk-through, he'll be
13 representing Alemar.

14 Q. Did Mr. Holt call you?

15 A. He must have.

16 Q. Why do you say he must have?

17 A. Because the walk-through happened.

18 Q. You recall, sitting here today, a phone
19 conversation with Mr. Holt?

20 A. Not specifically.

21 Q. Do you recall any kind of conversation
22 with Mr. Holt?

23 A. Just process, what we were going to do.

24 Q. When do you recall discussing process
25 with Mr. Holt?

1 A. On the first walk-through.

2 Q. Is that the January 24 walk-through, do
3 you think, is that the first one?

4 A. I don't remember which one, what dates
5 we went.

6 Q. Okay. Is it your recollection that
7 whenever the first walk-through was, you met with
8 Mr. Holt on that date prior to the walk-through to
9 discuss the process of the walk-through?

10 A. I met with Mr. Holt that morning and we
11 had nametags. I believe the walk-through started at
12 the administration building. People signed in at
13 the administration building and we were given
14 nametags by Mr. Holt and Mr. Harmon so that they
15 would be visible visitors in the building.

16 Q. Was Mr. Harmon present during your
17 meeting in the morning before the walk-through with
18 Mr. Holt?

19 A. There wasn't a meeting, it was, we're
20 here, here's the things that need to be done, and
21 that was it. There wasn't a meeting. It was just
22 directions on how we handled this.

23 Q. Who gave directions to whom?

24 A. Mr. Holt advised me of the process.

25 Q. Okay. So Mr. Holt was the one who

36

1 really conducted the walk-throughs, is that right?

2 MR. BLEE: Object to the form of the
3 question.

4 THE WITNESS: Mr. Holt was representing
5 Alemar and I was just the person on the district
6 that would open doors. So as far as showing
7 examples of classrooms or the servers or phone
8 closet, that was my job.

9 BY MR. KIRCHNER:

10 Q. If vendors had substantive questions
11 during the walk-through, and by substantive, I mean
12 something other than show me a classroom or could
13 you open this closet, something about the network,
14 would they direct that to you or to Mr. Holt?

15 A. In cases, it was both.

16 Q. Do you recall any questions during the
17 January 24 walk-through being directed to Mr. Holt?

18 A. There may have been specific question
19 to Mr. Holt.

20 Q. Do you remember any of those questions?

21 A. There was a large group of people
22 milling around. I didn't stay glued to Mr. Holt's
23 side. I was directing people around at things and
24 he stayed pretty stationary in some things. At lot
25 of times vendors would go to him.

1 A. I have a MacIntosh. It's -- I have the
2 Cube on my desk.
3 Q. And you still use that?
4 A. Yes, I do.
5 Q. When you experienced problems in October
6 of 2002 or thereabouts with your PC, to whom did you
7 report, if anyone? Did you report those problems
8 to?
9 A. To Mr. Jones.
10 Q. And what, if anything, did he do in
11 response to that?
12 A. I don't remember what he did. I don't
13 know that there was anything that could be done
14 about that. It was just like, deal with it.
15 Q. Wasn't the equipment under warranty?
16 A. The equipment warranties, which I found
17 out when I met Mr. Cavanaugh, I was told were never
18 filed, they were not auto enrolled. So the
19 equipment was basically being fixed locally in the
20 district, a lot of it. I'm not sure what happened
21 to pieces that didn't work. But we didn't -- we
22 weren't sending them out until later on.
23 Q. Who was responsible for filing the
24 warranties?
25 A. Data center.

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1 Q. Do you know who Peggy Davis is?
2 A. Yes. She was a help desk person.
3 Q. Is she a district employee?
4 A. Yes, she is.
5 Q. Is she still there?
6 A. Yes, she is.
7 Q. Was she the one responsible for the
8 warranties?
9 A. I believe Mr. Jones is responsible for
10 the warranties. She took her direction from him.
11 Q. Okay. So your testimony is that HP --
12 Cavanaugh, Mr. Cavanaugh, arranged for Excelsius to
13 come in and pick up equipment that was
14 malfunctioning and take it and fix it, is that
15 right?
16 A. That's correct.
17 Q. Did HP do any other work for the
18 district?
19 A. No.
20 Q. What is Empire?
21 A. Empire Technologies is our maintenance
22 for our phone systems.
23 Q. Strictly phone system?
24 A. They are certified for Via Equipment.
25 Q. So when you have problems with your

1 phone equipment, Empire would be the one you would
2 turn to?
3 A. Yes.
4 Q. Did they have any other role in the
5 district at this time?
6 A. At this time, we're installing a call
7 back system, so, you know, anything that would deal
8 with the Via equipment, we would be calling on them
9 for information, state contract, so forth.
10 Q. Does Empire have anything to do with the
11 data network?
12 A. No.
13 Q. Okay. How about you mentioned before
14 Comtec.
15 A. Um-hum.
16 Q. Has Comtec ever done work for the school
17 district?
18 A. Comtec has a contract from last year as
19 a consultant on the phone things such as the rates,
20 what lines were being used, what lines were not
21 being used so we could eliminate some costs, some
22 things that didn't belong.
23 Q. Does Comtec have anything to do with the
24 data network?
25 A. No.

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1 Q. They are strictly the phone lines?
2 A. That's correct. Their consulting thing
3 was they also did some cabling for me where I needed
4 some extra drops at the new school. They also were
5 a subcontractor on the new schools to bring in the
6 TV cabling for the TVs that are going into
7 classroom, they installed the TV cabling.
8 Q. And when was that contract awarded?
9 A. That was a subcontract from a vendor
10 that had --
11 Q. Which vendor was that?
12 A. I don't know. That's business office.
13 You would have to ask Lisa.
14 Q. Is that the same answer for the extra
15 cabling you needed for the data network?
16 A. When I went to New York Avenue school,
17 when it opened, there were not cables in the library
18 at the circulation desk. The furniture was there to
19 support a computer with a pull-out keyboard, but
20 there was no cabling. The food service had no
21 cabling. The computer labs had 25 cable drops, but
22 yet we have 30 computers in a lab plus printers. So
23 there were additional cables that I needed.
24 Q. When was that? When did that school
25 open?

1 Q. Do you recall specifically with respect
2 to these specific documents him coming to you and
3 asking for your approval?

MR. BLEE: Meaning P-11.

MR. KIRCHNER: P 11.

6 MR. BLEE: All the form 471s, all the
7 forms contained in P-11.

8 THE WITNESS: Not specific permission on
9 this particular form.

10 (P-12, Document Bates No. 04668 through
11 04707, marked for identification.)

12 BY MR. KIRCHNER:

13 Q. Take a look at what's been marked as
14 P-12. Tell me if you recognize that document.

15 A. It's a duplicate.

16 Q. It's an extra one.

17 MR. BLEE: These appear to be Bates
18 stamped 04668 through 04707. Is that correct?

19 BY MR. KIRCHNER:

20 Q. Is that correct?

21 A. This isn't.

22 MR. BLEE: Then a different packet.
23 Let's make sure we have the same packet.

24 THE WITNESS: I have 04671.

MR. BLEE: Before the witness marked

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1 P-12 is a document that is bate stamped 04671 --

2 MR. KIRCHNER: You know what, then this
3 should be included with it.

4 MR. BLEE: Just the second page is not
5 bate stamped and then the third page is 04707.

6 Mr. Kirchner, you would like also --

7 MR. KIRCHNER: Let's make sure we all
8 have the same thing. These are documents that were
9 produced randomly and they're not necessarily in any
10 order, but the first page is 04668.

11 MR. BLEE: Okay. Why don't I give --
12 can I make a suggestion? Let's go off the record.

13 (Discussion held off the record.)

14 BY MR. KIRCHNER:

15 Q. What's been put before you is Exhibit
16 P-12 which is a series of documents marked 04668,
17 04671 and there's an unmarked page. Then 04705, 706
18 and 707. And my question is, do you recognize those
19 documents?

20 A. No, I don't.

Q. You've never seen any of them before?

22 A. This is year six. I wasn't involved
23 with the bids.

24 Q. How do you know it's year six?

25 A. I saw that on here.

33 of 49 sheets

1 Q. Where did you see that? Point to the
2 page and could you just identify the Bates number on
3 that page?

4 A. Oh, I recognize it being -- I'm sorry, I
5 recognize it to be year six because of the message
6 in the E Plus, where the bid was received after the
7 due date. That's what told me --

8 MR. KIRCHNER: What page are you on?

9 MR. BLEE: I will help you. The message
10 in the E Plus I believe she's referring to is in the
11 document that is bate stamped 04671. She previously
12 referenced the unmarked page following that document
13 in response to a question, I believe, if you could
14 elaborate, Ms. Cohen.

15 THE WITNESS: On top of the page, the
16 unmarked page, it says eRate, year six bids results.

17 BY MR. KIRCHNER:

18 Q. You're referring to the unmarked page?

19 A. That's correct, the very top, the
20 Atlantic City E-rate year six bid results.

21 Q. Okay. And that same legend appears on
22 the top of 04705, is that right?

23 A. Correct.

24 Q. And also on top of 04706, is that right?

25 A. That's correct.

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1 Q. But not on 04707 and not on 04671 or
2 04668, is that right?

3 A. Correct.

4 Q. Do you see any references on those three
5 pages I'm speaking about, 4668, 4671 and 4707 that
6 would identify for you what year they were referring
7 to?

8 A. 04671, next to the E Plus bid, talks
9 about it being received after the due date, and that
10 was told to me by E Plus themselves, Joe Graciano
11 that they sent it in late.

12 Q. So because that appears there, you're
13 assuming, you're putting that together and you're
14 saying that must be year six?

15 A. They met the deadline for year seven.

16 Q. Because you recall that that happened in
17 year six, so you assume since you're reading that on
18 that page that this must refer to the year six bid?

19 A. That's correct.

20 Q. And by "this page" I'm referring to
21 04671. And your testimony is that you had nothing
22 to do with the year six bids, other than the
23 walk-throughs?

24 A. Other than the walk-through.

25 Q. So you've never seen these documents

1 before?

2 A No. I wouldn't have any reason to go to

3 these at that point.

4 Q. Were similar documents created for the year seven bid?

5 A. The documentation of the awards was done

6 in a one page to the Board of who the vendor was and

7 what award they won.

8 Q. Who created that document?

9 A. I did.

10 Q. Have you produced that document to your

11 counsel?

12 A. Probably, because it was just a one

13 page. This bid was awarded to this person.

14 Q. Okay. Well, we have not received that.

15 A. I'll check. I'll check and see if I

16 have it. Because it was done for Donna. It was

17 done so she could take it to the board. I thought

18 it was in the board records.

19 Q. But is it your testimony that there were

20 no spread sheets created similar to those identified

21 as P-12 to list the bids that were received for year

22 seven and attempt to evaluate and rank them?

23 A. This is a ranking? It wasn't done in

24 this way.

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1 Q. Was it done in any other way?

2 A. It was marked up on the sheets, the

3 individual bid sheets. Areas were circled or

4 checked and then informed Mr. Friedman of who won

5 what pieces and then he put it together in a

6 document form.

7 Q. Is there any documentation to show what,

8 if any, evaluation of each of the bids was done?

9 A. The only evaluation would have been

10 going bid by bid, line by line, matching up funds --

11 matching up equipment. And we reported that process

12 to the SLD and it would be in the package being bated

13 stamped.

14 Q. When you say "we," who do you mean? We

15 reported to the SLD, who are you referring to?

16 A. The district's consultant, Mr. Friedman.

17 Q. Okay. You testified earlier, though,

18 that Mr. Friedman had nothing to do with evaluating

19 the bids for year seven?

20 A. He didn't. He didn't evaluate, he

21 reported them.

22 Q. My question is, is there any

23 documentation to show any evaluation of the year

24 seven bids, or was it all done in your head?

25 A. Well, I marked up the work copies that I

1 had

2 Q. The work copies of what, of the bids?

3 A. Of the bids.

4 Q. And where are those marked up copies?

5 A. They would be in my office.

6 Q. Have you produced them to your counsel?

7 A. They were at the document disclosure

8 thing. Everything from that box was there.

9 MR. BLEE: Mr. Shea, you're not going to

10 speak in this deposition, your counsel will speak.

11 And evidently, Ms. Cohen thinks they were available

12 at the inspection. If they're not there, I will

13 produce them.

14 MR. KIRCHNER: Well, for the record,

15 they've never been produced, so, you know, we don't

16 know that they exist, and if they do, we would like

17 them produced.

18 MR. BLEE: Fair enough.

19 MR. KIRCHNER: And I assume when you say

20 marked up copies, you're talking about handwriting

21 on the actual bids themselves?

22 THE WITNESS: Correct.

23 BY MR. KIRCHNER:

24 Q. And whose handwriting would appear

25 there?

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1 A. Mine.

2 Q. And who was the gentleman that you say

3 you used to help you evaluate those bids?

4 A. Mike Sweeder.

5 Q. Did Mr. Sweeder write on any of the

6 bids?

7 A. He was given a copy to work with next to

8 me. We both had sheets and he would show me on his

9 and then I would mark my copy, which were

10 appropriate pieces and which were comparable pieces

11 and which would do what we needed to do.

12 Q. And where are his copies?

13 A. In the trash.

14 Q. In the trash. Okay. Do you have any

15 other documentation to document Mr. Sweeder's

16 evaluation of the bids that were received?

17 A. No.

18 Q. Did he take any notes during that

19 meeting?

20 A. Not that I would have kept. He went

21 over piece by piece with me. He had no need to keep

22 any documentation of his meeting with me. It was,

23 you know, going over with a friend something that he

24 does on a daily basis.

25 Q. By the way, where did this meeting

no
Doc's

1 SUPERIOR COURT OF NEW JERSEY
2 LAW DIVISION - ATLANTIC COUNTY
3 DOCKET NO. ATL-L-477-04

4 RELCOMM, INC.,
5 Plaintiff,
6 vs.
7 ATLANTIC CITY BOARD OF EDUCATION;
8 FREDERICK P. NICKELS; MICRO
9 TECHNOLOGY GROUPE, INC.; DONNA
10 HAYE; MARTIN FRIEDMAN; ALEMAR
11 CONSULTING; and JOHN DOES 1-20,
12 Defendants.

13 -----
14 Friday, October 1, 2004
15 -----

COPY

16 Oral sworn deposition of MARTIN
17 FRIEDMAN, taken at the law offices of Flaster
18 Greenberg, 1810 Chapel Avenue West, Cherry Hill, New
19 Jersey, before Robert J. Boccolini, Certified
20 Shorthand Reporter and Notary Public of the State of
21 New Jersey, on the above date, commencing at 10:10
22 a.m., there being present:

23 FLASTER GREENBERG
24 1810 Chapel Avenue West
25 Cherry Hill, NJ 08002
BY: J. PHILIP KIRCHNER, ESQ.
Attorneys for Plaintiff

26 -----
27
28 TATE & TATE
29 The Lexington Building, Suite 5
30 180 Tuckerton Road
31 Medford, New Jersey 08055
32 (856) 983-8484 - (800) 636-8283
33 www.tate-tate.com

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1 When that meeting concluded and I was walking
2 out the door, Mr. Jones was walking into his office.
3 Q. When was that meeting?
4 A. That was sometime in November. I don't
5 recall the exact date.
6 Q. November of 2002?
7 A. Yes, sir.
8 Q. Who called that meeting?
9 A. It was called by the administration. It was
10 a follow-up meeting.
11 Q. Given your testimony that you were unable to
12 get documents you needed to perform your task, what
13 conclusion did you reach?
14 A. My conclusion was that they were funded for
15 their priority 1 initiatives. However, Mr. Jones had
16 not filed for reimbursements, he was out of
17 compliance, and they were losing money daily by not
18 filing.
19 I also concluded that their priority 2
20 initiatives were -- the status of those initiatives
21 were as yet unfunded.
22 And I also knew that the SLD was not funding
23 below 90 percent, and since the district was an 87
24 percent district, the chances of them receiving
25 funding were not good.

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1 Q. How did you know that the SLD was not funding
2 below 90 percent?
3 A. Because they hadn't been funding below 90
4 percent for a number of years.
5 Q. Do you know what level of funding was reached
6 in the Year 4?
7 A. The SLD has had some surplus and has gone
8 back afterwards and funded below 90 percent in prior
9 years, including Year 6 and Year 5.
10 Q. That's not my question. I'm asking you what
11 level of funding was reached in Year 4?
12 A. To the best of my knowledge it was 90
13 percent, but I am also aware that Atlantic City
14 received some funding in Year 4.
15 Q. Is it also your understanding that Atlantic
16 City was not at 90 percent in Year 4?
17 A. Yes.
18 Q. So, you put that together, isn't it true that
19 the SLD funded below 90 percent in Year 4?
20 A. I believe in Atlantic City's case I believe
21 that is -- that is true.
22 Q. Well, are you saying that Atlantic City was
23 an exception?
24 A. I am saying I know of no other school that
25 got funded below 90 percent.

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1 Q. Do you know schools that were below 90
2 percent that did not get funded Year 4?
3 A. Yes.
4 Q. What schools are those?
5 A. There were some schools in the Pennsylvania
6 arena. I got a list of schools.
7 Q. Can you tell me any names of schools that you
8 know were below 90 percent in Year 4 and cannot get
9 funded?
10 A. No, I cannot.
11 Q. How about Year 3, do you know what level of
12 funding was reached in Year 3?
13 A. I -- I don't recall. I believe up until
14 Year 4 mostly everything did receive funding, but it
15 was 70 percent and above.
16 Q. So, does that mean that you understand that
17 in Year 3 funding below 90 percent was funded?
18 A. Yes.
19 Q. What about Year 5, what was the ultimate
20 outcome of Year 5 as far as funding levels are
21 concerned?
22 A. 90 percent.
23 Q. So, schools below 90 percent were not funded
24 in Year 5?
25 A. And chances of them being funded were remote.

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1 Q. That's not what I'm --
2 A. I can't give -- I can't give a definite
3 answer on 90 percent because they -- sometimes they
4 go back and do that.
5 Q. Well, Year 5 was two years ago; is that
6 right?
7 A. Year 5 was -- the contracts with that was the
8 initiative -- the initiatives that Atlantic City
9 asked me to look at, and at that time my
10 understanding was they were not going to fund below
11 Year -- below 90 percent.
12 I did not state that they would not get
13 funding. I simply stated that 90 percent was the
14 threshold and they probably would not receive
15 funding.
16 Q. Have you made any effort to go back and look
17 historically to see what level of funding was reached
18 in Year 5?
19 A. No, I have not.
20 Q. So, sitting here today you don't know what
21 level of funding ultimately was funded in Year 5; is
22 that right?
23 MS. WEINSTEIN: Objection.
24 MR. BLEE: Objection to form.
25 THE WITNESS: As I stated before, the

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1 you to the School Board, to Mr. Nickels?
2 A. No, I don't know who that was.
3 Q. Well, do you know individuals at ComTec?
4 A. I am familiar with maybe four or five people.
5 Q. How long have you known ComTec -- strike
6 that.
7 Go back to the time of your meeting in
8 October, November of 1992. How long had you known
9 ComTec at that time?
10 A. That was 2002.
11 Q. 2002, yeah.
12 MS. WEINSTEIN: I'd like to object to
13 the question. It was just too quick to insert it
14 here.
15 How long have you known ComTec, the
16 entity, is that the question?
17 Q. The entity at that time, October of 2002.
18 A. I don't know. Maybe a month.
19 Q. Had you done work with ComTec in the past?
20 A. No.
21 Q. How did you know ComTec?
22 A. ComTec won an award in one of my schools in
23 Pennsylvania.
24 Q. When you say one of your schools, what do you
25 mean by that?

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1 A. I have a number of clients and they won the
2 contract with one of my clients.
3 Q. And when you say a client, does that mean you
4 have a consulting contract with that school?
5 A. Yes.
6 Q. Okay. To handle their E-Rate bids, is that
7 part of your responsibility?
8 A. Yes, to handle the E-Rate process.
9 Q. Okay. As part of that process, don't you
10 get involved in reviewing bids?
11 A. I never review bids.
12 Q. You never review bids?
13 A. Never.
14 Q. Okay. Do you see bids? Do you know who's
15 bidding?
16 A. Only when they are opened and I am present do
17 I see it.
18 Q. Have you ever been the person designated as
19 the recipient of bids?
20 A. All bids come to me. I then bring them to
21 the entity.
22 Q. So, wouldn't it be true that if ComTec was
23 one of the bidders on a project you would know that?
24 MS. WEINSTEIN: Objection.
25 THE WITNESS: I don't think so.

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1 Q. Okay. Why not?
2 A. Because like RelComm they may have sent it in
3 an envelope without a return address and I would not
4 know what the contents were or who it came from.
5 Many vendors do that.
6 Q. Okay. Have you ever recommended that ComTec
7 get a contract to do work at any of the schools where
8 you worked?
9 MS. WEINSTEIN: Objection.
10 THE WITNESS: I don't recommend anyone.
11 Q. Okay. But ComTec recommended you; is that
12 right?
13 MS. WEINSTEIN: Objection.
14 THE WITNESS: To the best of my
15 knowledge, ComTec understood that I was managing
16 E-Rate and brought that information to Atlantic City.
17 BY MR. KIRCHNER:
18 Q. And isn't it true that ComTec is now a vendor
19 at the Atlantic City School Board?
20 A. For -- yeah, I believe they are.
21 Q. For both Year 6 and Year 7; is that right?
22 A. They received no awards in Year 6.
23 Q. Aren't they doing work for the school
24 district as a subcontractor under Year 6?
25 A. I don't have anything to do with that and I

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1 don't have any knowledge of that.
2 Q. You're not aware of that?
3 A. I'm aware that ComTec is doing work for the
4 school, but what the particulars of that work are I'm
5 not privy to.
6 Q. Okay. And you're aware that ComTec was the
7 recipient of an award in Year 7 at the Atlantic City
8 School Board; is that right?
9 A. Yes.
10 Q. Now, did you conclude your first assignment,
11 your -- the scope of work for which Alomar was
12 retained in October of 2002, did you conclude that
13 work?
14 A. Yes.
15 Q. And how was that project concluded?
16 A. The project was concluded by my giving them a
17 written status of where they were with their Year 5
18 initiative and a chart that showed what moneys were
19 still owed to them and what they had to get -- what
20 they had to file to get their money.
21 I believe that was presented to the board as
22 well.
23 Q. So, you presented a written report to -- did
24 it go to Mr. Nickels first?
25 A. Yes.

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1 district to withdraw a request for funding for
2 maintenance work that had already been done?
3 MR. BLEE: Objection.
4 MS. WEINSTEIN: Objection.
5 THE WITNESS: Not my choice.
6 Q. So, you had nothing to do with that decision?
7 MR. BLEE: Objection.
8 THE WITNESS: I don't make those
9 decisions. I don't make decisions on contracts.
10 Q. Do you know who at the district made that
11 decision?
12 A. There was a team of three people, four
13 people, so the people I met with would be Mr.
14 Nickels, Mr. — Miss Hayes, Miss Cohen, and Miss
15 Mooney, and through these discussions they felt it
16 was most prudent to withdraw the request.
17 Q. When was that decision made, do you recall?
18 A. January or February of 2004.
19 Q. About the time you were responding to the
20 audit request?
21 A. It was specifically in response to an audit
22 request.
23 Q. So, that was not withdrawn in Year 3 — or
24 excuse me, in year 2003?
25 A. Rephrase the question.

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1 Q. What is your recollection as to when the Year
2 5 contract bid request was withdrawn?
3 A. Right here during the Year 5 audit review in
4 February of 2004, almost two years after that project
5 should have been funded.
6 Q. Are you familiar with the phrase "calling in
7 an alert"?
8 A. No, I'm not.
9 Q. Okay. Are you familiar with a process by
10 which a School Board can — or someone connected to a
11 School Board can alert the SLD to what it considers
12 to be a problem with a bid request?
13 A. You can file an objection. That's as far as
14 I know. I haven't had anybody file anything —
15 Q. Well, do you know —
16 A. — alerting me.
17 Q. Do you know if any objection was filed by the
18 school district or anyone else to Year 5?
19 A. I have no knowledge of that.
20 MS. WEINSTEIN: Objection.
21 Q. Would you turn to the next page, please, page
22 15. Up at the top there it says based on continuous
23 problems with the network, e-mail, and other IT
24 related issues the district hired Omicron, and then
25 it continues.

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1 Do you know if those continuous problems with
2 the network, e-mail, and other IT related issues is
3 documented anywhere?
4 A. Other than in the Omicron report?
5 Q. Yes.
6 A. I heard it from district people when I was
7 out in the schools.
8 Q. Have you ever seen any written reports of
9 problems with the network?
10 A. Not that I can recall.
11 Q. Have you ever seen any problems — written
12 reports of problems with the e-mail system?
13 A. I've seen no written reports other than the
14 Omicron reports.
15 Q. And the same is true with regard to the other
16 IT related issues?
17 A. That is true, no written report.
18 Q. Now, the next paragraph down says since the
19 status of the Year 5 internal connection projects
20 was, quote, as yet unfunded, close quote, and the
21 district had no expectation that these projects would
22 be funded, they decided to re-bid a number of these
23 items in their Year 6 initiative, most especially the
24 servers.
25 See that language?

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1 A. Yes, I do.
2 Q. Now, isn't it true that the Year 5 bid was a
3 duplicate of the Year 4 bid?
4 A. I have no knowledge of that.
5 Q. Sitting here today you don't know that?
6 A. I know that servers were delivered in Year 4.
7 I have no knowledge that Year 5 was a duplicate of
8 Year 4.
9 Q. Have you ever heard that from anyone —
10 A. No.
11 Q. — that Year 5 was a duplicate of Year 4?
12 A. No.
13 Q. Okay. Isn't it true that when a funding
14 request is outstanding that it's a common for a
15 school district to repeat their request in the
16 subsequent year?
17 A. Yes. That's what we did in Year 6.
18 Q. And didn't you do that in Year 7 also?
19 A. Yes. However, in Year 4 those servers were
20 delivered, so we don't have an unfunded mandate from
21 Year 4 being carried over to Year 5 in the same way
22 we did that with Year 6 and 7.
23 Q. But at the time the Year 5 470s were due to
24 be filed, do you know whether Year 4 had been funded
25 yet?

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1 A. No, I do not know that.
2 Q. And if they hadn't been funded, wouldn't it
3 have been appropriate to duplicate that request in
4 Year 5?
5 A. If that were the case, the answer would be
6 yes.
7 Q. In that passage that I just read to you, the
8 language says the district had no expectation that
9 these projects would be funded.
10 What are you referring to there?
11 A. Well, we are two years out. They have not
12 been funded, they had no expectation of it being
13 funded at that point. SLD had not gone back and
14 funded anything under 90 percent --
15 Q. So, it's your --
16 A. -- so they had very little expectation.
17 Maybe the word no should have been qualified with
18 little expectation, but it's basically the same idea.
19 Q. Okay. So, you're saying that as of February
20 of 2004, which is the time this document was
21 drafted --
22 A. Right.
23 Q. -- the SLD had not funded below 90 percent
24 for Year 5?
25 A. No, they had not. They had no expectation

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1 that that would happen.
2 Q. Isn't it also true that there was an
3 investigation under way at the SLD regarding Year 5?
4 A. There have been investigations at the SLD
5 through many of the funding years. Which
6 investigation are you referring to?
7 Q. Referring specifically to the ACBOE Year 5
8 application.
9 MS. WEINSTEIN: Objection.
10 THE WITNESS: I have no knowledge that
11 ACBOE was investigated about anything, except they
12 were reviewed in Year 1 and then the reviews that we
13 had in year 2004.
14 Other than that, I am aware of no other
15 investigation by the SLD, FCC, or ACBOE.
16 Q. Are you aware that a police investigation was
17 initiated by the school district for the Year 5
18 E-Rate?
19 MS. WEINSTEIN: Objection.
20 THE WITNESS: I'm aware that a police --
21 yes, I'm aware that -- yes, I'm aware of that.
22 Q. Do you know who initiated that investigation?
23 A. No, I do not.
24 Q. Were you involved in any way in that
25 investigation?

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1 A. I was interviewed by the New Jersey State
2 Police.
3 Q. When did that occur?
4 A. Several times.
5 Q. Starting when?
6 MS. WEINSTEIN: Objection. I'm going
7 to object to this line of questioning.
8 There's nothing in the complaint, any
9 alleged injury against any party here that has to do
10 with this particular line of questioning.
11 You can answer.
12 THE WITNESS: Three or four contacts
13 over the last couple years.
14 BY MR. KIRCHNER:
15 Q. When was the last time you were contacted?
16 A. Over the summer.
17 Q. Summer of 2004?
18 A. Yes.
19 Q. Have you been contacted by the FBI?
20 A. No.
21 Q. Have you ever been contacted by any other law
22 enforcement agencies?
23 MS. WEINSTEIN: Objection to the form.
24 THE WITNESS: No.
25 Q. Have you been contacted by anyone from the

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1 State Department of Education?
2 A. Yes.
3 Q. When did that occur?
4 A. Last fall, I believe.
5 Q. And what was that in connection with?
6 A. In whether or not we were in compliance with
7 the state bidding requirements when we did Year 6.
8 They asked for additional documentation.
9 MR. KIRCHNER: Let's mark this next.
10 (P-40, USAC, Funding Year 2003 Selective
11 Review Additional Questions, marked.)
12 Q. Mr. Friedman, before we get to the next
13 exhibit, your testimony about contact by the New
14 Jersey State Police in the summer of 2004, were you
15 interviewed at that time?
16 A. What do you mean by interview?
17 Q. I mean did you have a meeting with someone
18 from the State Police?
19 A. We -- it was a telephone contact.
20 Q. Who participated in the telephone call?
21 A. Me.
22 Q. Just you?
23 A. Yes.
24 Q. Was there someone on the other end?
25 A. I'm not sure I'm supposed to be discussing

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1 MS. WEINSTEIN: That would be my
2 objection as well, but in addition to that, rather
3 than just stating it, my objection goes beyond that.
4 MR. KIRCHNER: Okay.
5 BY MR. KIRCHNER:
6 Q. You can answer the question.
7 A. As you state, documents are still being
8 discovered and I cannot write a report until I have
9 something wholly to report upon.
10 Q. Okay. Were you paid for your report?
11 A. Yes.
12 Q. So, you've already been paid but you haven't
13 produced the report?
14 A. We're continuing purchase orders that buys
15 additional time to conduct these -- this work.
16 Q. Are you saying there's another purchase order
17 that's outstanding now to pay you additional for this
18 report?
19 A. No. That has recently been paid.
20 Q. Okay. How many purchase orders were issued
21 in connection with this work?
22 A. Three.
23 MS. WEINSTEIN: Objection.
24 Q. And do you know the total amount of those
25 purchase orders?

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1 A. I can't recall the total amount.
2 Q. Can you recall the amounts of any of them?
3 A. No, sir, I cannot.
4 Q. Okay. Do you have copies of those purchase
5 orders?
6 A. Most probably.
7 MR. KIRCHNER: Let's get this marked
8 next.
9 (P-41, Memo dated 12/2/02, marked.)
10 Q. Please take a look at what's been marked as
11 P-41 and tell me if you've ever seen that document
12 before?
13 A. No, I have not.
14 Q. You don't recognize it?
15 A. Not at all.
16 Q. Okay. That's easy.
17 (P-42, E-mails, marked.)
18 Q. Mr. Friedman, take a look at what's been
19 marked as P-42 and tell me if you recognize that
20 document, please.
21 A. Um-hum.
22 Q. Would you tell us what that is, please?
23 A. This is me contacting the school district
24 trying to get documents in order to respond to a
25 review.

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1 Q. And what is the issue that's being discussed
2 here?
3 A. The issue is that I don't have a copy of that
4 agreement that Mr. Nickels had with the -- that would
5 be the bridge.
6 Q. Wasn't it part of your responsibility under
7 your contract with the school district to maintain a
8 file of all documents?
9 A. I don't maintain the contracts. Contracts
10 are usually signed outside of my scope of work.
11 Q. Okay.
12 A. And I usually request them from the district
13 if I do an audit.
14 Q. By contract, are you referring to the
15 contract between the school district and MTG?
16 A. Any contract.
17 Q. Okay. What was the contract that was at
18 issue here?
19 A. The contract at issue here were was the
20 contract with MTG, I believe.
21 Q. And do you recall what the question that was
22 raised was?
23 A. They wanted to know whether the district had
24 any legally binding agreement in preparation of a
25 formal contract, which they had a formal contract and

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1 needed that bridge.
2 Q. Wasn't the issue that the contract with MTG
3 wasn't executed until six or seven months after the
4 award was made and the 471 was filed?
5 A. No, that actually wasn't the issue. The --
6 I mean, the district can write a formal contract any
7 time. The district could also make a decision
8 whether they wished to effectuate that contract
9 without a funding commitment letter. That is what
10 they were agonizing over.
11 Q. But isn't it a requirement of the E-Rate
12 program that there be a contract in place before the
13 471 is signed?
14 A. Or legally binding agreement in preference to
15 a contract, which was later done.
16 Q. Okay. So, this was this an effort to
17 demonstrate to the SLC that a legally binding
18 agreement was in place?
19 A. SLD. And yes.
20 (P-43, Memo dated 2/13/04, marked.)
21 Q. Take a look at P-43 and tell me if you
22 recognize that document?
23 A. Yes.
24 Q. Tell us what it is, please.
25 A. Without seeing this in relation to other

FCC

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1 transcript. You say, starting on line 22: Now, all
2 those 470s, and there is no conflict because until
3 you write a 471 against a 470 they don't mean a
4 thing, they don't mean a thing. It is when you file
5 the 471 it says, it said we have accepted these
6 contracts, we are moving forward with this. That's
7 continuing over to page 169.
8 Do you recall saying that?
9 A. Again, this was quite a while ago, so I don't
10 recall making the statement per se, but the statement
11 is here and I have discussed these things, so I can
12 support that what's here is accurate.
13 Q. So, that's an accurate statement?
14 A. However, these sentences are somewhat out of
15 context, because the question really being addressed
16 is the manner with which I filed and the ability to
17 disaggregate the school district, of which I took
18 directions directly from the SLD.
19 Q. When you say disaggregate, you mean to break
20 the school district down into separate buildings?
21 A. To pull the high school out of the district
22 because its discount rate was making the rest of the
23 district lower than 90 percent, so you are -- you can
24 disaggregate a district and guarantee that your 90
25 percent schools get their internal connections and

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1 gamble with the schools that don't, which is what
2 they were doing, gambling with the entire district
3 when they were below 90 percent.
4 So, it's an appropriate strategy. It's one
5 that I had inquired with the SLD as to how to
6 proceed. I received a response from the SLD on how
7 to proceed, and that's the way I proceeded.
8 Q. So, with that context in mind, is the
9 statement that I just read to you from this
10 transcript accurate?
11 A. Right. I wasn't sure whether it was the 470
12 or the 471 that would allow us to disaggregate, so in
13 order to cover all bases I made sure that I submitted
14 a 470 that covered the entire district, including the
15 high school, and I submitted individual 470s against
16 the other schools in the district.
17 It was only the larger 470 which the SLD said
18 that would have covered everything in the district
19 that we moved forward on. *minus the high school*
20 Q. Okay. Again, I'm asking you a yes/no
21 question. With that explanation in context in mind,
22 is the statement that I just read to you accurate?
23 A. It's accurate in the context of what I just
24 said.
25 Q. Okay. Thank you.

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1 I guess turn to page 171, please. You'll
2 see on line 16 there Miss Salway. Do you know who
3 Miss Salway is?
4 A. I knew that she is a board member.
5 Q. Okay. She says, it's recorded here, you
6 could ask the superintendent about the schools, what
7 schools are coming on, what schools -- I mean you're
8 saying that you couldn't ask anybody in
9 administration. They couldn't tell you. I believe
10 Mr. Nickels could tell you if you asked him. Am I
11 correct, Mr. Nickels?
12 She's referring here, I believe, to which
13 schools were going to be open next year and which
14 schools were going to be closed; is that right?
15 A. Yes.
16 Q. And is that an accurate statement that you
17 could have gotten that information from Mr. Nickels?
18 A. I don't know that. Mr. Nickels says here he
19 could probably tell me that, I guess. But certainly
20 I was not able to get that information when I had
21 asked.
22 Q. Did you ask Mr. Nickels that question?
23 A. I asked the people that I had going to the
24 school district to get that information.
25 Q. What people did you have going to the school

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1 district?
2 A. That would be Mr. Holt and Mr. Harmon.
3 Q. Who is Mr. Holt?
4 A. Mr. Holt is a subcontractor I brought on to
5 do the walk-throughs.
6 Q. Okay. And what if anything did he have to
7 do with putting together the 470s?
8 A. Nothing. He helped -- we showed the
9 district information packets that we had done for
10 other entities, and they seemed to agree that would
11 be appropriate for them, so we used those same
12 information packets for the district.
13 Q. Who was the other individual you mentioned?
14 A. Mr. Harmon.
15 Q. Who is Mr. Harmon?
16 A. Mr. Harmon is, again, an associate of Alomar
17 that was brought on to help me manage this process.
18 Q. Is he also an independent contractor?
19 A. Um, in a sense, yes.
20 Q. Well, is he an employee of Alomar? Is Mr.
21 Harmon an employee of Alomar?
22 A. No.
23 Q. For whom does Mr. Harmon work?
24 A. For himself.
25 Q. Does he have a company?